HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT APPEAL No. 672 of 2007

Between:

P. Mallikarjuna

… Appellant

AND

The Joint Collector & EOED,
Ananthapur, Ananthapur District
and two others.

… Respondents

: JUDGMENT :

Counsel for the appellant : Shri K.V. Raghuveer

Dated: 24th August, 2007

Per G.S. SINGHVI, C.J.

This appeal is directed against order dated 6.7.2007 passed by the learned Single Judge, whereby she declined to interfere with the decision of Joint Collector and EOED, Anantapur (respondent No.1) to disqualify the appellant from participating in the process for award of contract for transportation of essential commodities.

In response to notice dated 22.2.2007 issued by respondent No.1 inviting tenders for appointment of Stage II contractors for transporting essential commodities from MLS Point to fair price shop points, the appellant submitted his tender. He was qualified with another tenderer and was declared as the successful bidder. However, on receipt of a complaint that the appellant was having a rice mill and keeping in view of Clauses 5 and 21 of notice dated 22.2.2007, respondent No.1 disqualified him.

The appellant challenged the decision of respondent No. 1 in Writ Petition No. 6358 of 2007. The learned Single Judge dismissed the writ petition by recording the following observations:

> "It is not in dispute that as per Clause-5 of the terms and conditions of the tender notice the Rice Millers Association/the Rice Millers Lorry Owners Association or their Associates are prohibited from participating in the tenders. Though the petitioner does not dispute the fact that he is the owner of a rice mill, it is only pleaded that the same has been leased out to a third party and he is in no way concerned with the said rice mill. However, on an enquiry by the 2nd respondent it was found that the rice mill stands in the name of the petitioner and the property tax and the electricity bills are being paid in his name. Thus, the respondents 1 and 2 having disbelieved the version of the petitioner held that he was disqualified under Condition No.5. I do not find any justifiable reason to interfere with such a finding of fact in exercise of the extraordinary jurisdiction under Article 226 of the Constitution of India.
>
> The law is well-settled that the contractual matters are not justiciable and they need judicial intervention only in case of unfairness. It is also a well-settled principle of law that the right to

> choose cannot be considered to be an arbitrary power as long as the said power is not exercised for any collateral purpose.
>
> As rightly contended by the learned Counsel for the Corporation, the condition imposed under Clause-5 of the Tender Notice is aimed at eliminating any person associated with the business of rice mills since the tenders are invited for transportation of essential commodities from MLS Point to fair price shop points. In the circumstances, even assuming that the petitioner is not running the rice mill by himself, since his association with the business cannot be ignored I am unable to hold that the action of the Corporation in disqualifying him under Clause-5 is either arbitrary or unreasonable."

Sri K.V. Raghuveer argued that even though the appellant owns the rice mill, he could not have been disqualified from participating in the tender process because he is not a member of Rice Millers Association or Rice Millers Lorry Owners Association. He further argued that Clauses 5 and 21 were inserted in the tender notice with the sole object of disqualifying the appellant and the learned Single Judge committed a serious error by declining to entertain his prayer for invalidation of the decision of respondent No.1. He submitted that the appellant had leased out the rice mill to D. Satyanarayana for a period of three years commencing from 11.5.2005, who also obtained licence in the name and style of M/s. S.L.N.S. Traders to run the rice mill and, therefore, the appellant could not have been disqualified from award of contract.

In our opinion, the view taken by the learned Single Judge on the appellant's ineligibility to be awarded contract does not suffer from any legal infirmity. The appellant's assertion that he leased out the rice mill to D. Satyanarayana does not take him out of the zone of disqualification enumerated in Clauses 5 and 21 of the terms and conditions of the tender notice and respondent No.1 could legitimately disqualify him on the premise of his association with rice millers and we do not see any reason to nullify his decision.

The suggestive argument made by the learned counsel that Clauses 5 and 21 were incorporated in the tender notice with a view to favour some person cannot be entertained because he has not

challenged the tender notice.

In the result, the appeal is dismissed.

As a sequel to dismissal of the appeal, WAMP.No.1339 of 2007 filed by the appellant for interim relief is also dismissed.

G.S. SINGHVI, CJ.

23rd August, 2007

C.V. NAGARJUNA REDDY, J.

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